

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

CASIE JO MCGEE and SARAH ELIZABETH  
ADKINS; JUSTIN MURDOCK and WILLIAM  
GLAVARIS; and NANCY ELIZABETH MICHAEL  
and JANE LOUISE FENTON, individually and as next  
friends of A.S.M., a minor child;

*Plaintiffs,*

v.

KAREN S. COLE, in her official capacity as CABEL  
COUNTY CLERK; and VERA J. MCCORMICK, in  
her official capacity as KANAWHA COUNTY  
CLERK;

*Defendants,*

and

STATE OF WEST VIRGINIA;

*Defendant-Intervenor.*

No. 3:13-cv-24068

Hon. Robert Chambers

**PLAINTIFFS' PARTIAL OPPOSITION  
TO DEFENDANT-INTERVENOR'S MOTION  
TO AMEND THE DEADLINE TO RESPOND  
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs' Motion for Summary Judgment (Dkt. 40) has been pending since December 30, 2013.

On December 31, 2013, Defendant-Intervenor West Virginia (the "State") moved to stay briefing (Dkt 43) on Plaintiffs' Motion until after this Court ruled on pending motions to dismiss (Dkts. 26-27, 31-32, 34).

At the January 6, 2014 status conference in this case, the Court advised the State and Defendants Karen S. Cole and Vera J. McCormick (together, “Defendants”) to commence work on their response because the Court was not likely to dismiss the case in its entirety.

On January 17, 2014, this Court issued an order (Dkt. 52) requiring the Defendants to file their responses to Plaintiffs’ motion for summary judgment within seven days after the Court issues its order on the pending motions to dismiss.

On January 24, 2014, the State moved (Dkt. 53) for the Court to amend that schedule and allow Defendants and the State to file their responses to Plaintiffs’ motion for summary judgment on the later of February 7, 2014, or seven days after this Court’s order on the pending motions to dismiss.

The State offered several reasons for seeking this request, including that (a) this is “a significant case,” (b) three motions to dismiss are pending, (c) summary judgment will likely be the parties’ only opportunity to address the merits, and (d) the State has been simultaneously engaged in “other significant State matters,” including the chemical spill. (Dkt. 53 at 2). Only the fourth of these reasons is a new fact not previously addressed in the State’s motion to stay.

Plaintiffs recognize that the chemical spill has significantly burdened everyone in this State, including Plaintiffs, and accordingly are willing to grant Defendants and the State the courtesy of an extension to file their responses to Plaintiffs’ motion for summary judgment on the later of February 7 or seven days from this Court’s order on the pending motions to dismiss. However, given the delays already experienced in this case (*see* Dkts. 23, 52), and the consequences of further delays, *see, e.g., AFT - W. Va. v. Kanawha Cnty. Bd. of Educ.*, 592 F. Supp. 2d 883, 905 (S.D. W. Va. 2009) (violation of fundamental constitutional right demonstrates irreparable harm), Plaintiffs request a defined briefing schedule in accordance with

this Court's rules of motion practice so as to ensure that Plaintiffs' motion – which has already been pending for a month – is ripe for review expediently.

Plaintiffs respectfully request that the Court issue a briefing schedule as follows:

On the later of February 7, 2014 or no more than seven days after the issuance of the Court's order on pending motions to dismiss: Defendants' and the State's responses to Plaintiffs' motion for summary judgment are due; Defendants' and the State's cross-motions (if any) for summary judgment are also due.

No later than fourteen days after Defendants' and the State's responses to Plaintiffs' motion for summary judgment and cross-motions (if any) are filed: Plaintiffs' reply in support of summary judgment and opposition to Defendants' and the State's cross-motions (if any) for summary judgment is due.

No later than seven days after Plaintiffs' reply and opposition is filed: Defendants' and the State's replies in support of their cross-motions (if any) for summary judgment are due.

Accordingly, Plaintiffs respectfully request that Defendants' Motion To Amend be granted in part and that an order imposing a briefing schedule as listed above be issued.

Dated: January 27, 2014

Respectfully submitted,

CASIE JO MCGEE and SARAH  
ELIZABETH ADKINS, et al.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of January 2014, I effected service upon counsel for Defendants by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system, which will cause service on all Defendants and counsel of record.

/s/ John H. Tinney, Jr.